

MATTHEW C. SOLOMON (appearing *pro hac vice*)
msolomon@cgsh.com

RAHUL MUKHI (SBN 350718)
rmukhi@cgsh.com

JENNIFER KENNEDY PARK (SBN 344888)
jcpark@cgsh.com

CLEARY GOTTLIEB STEEN & HAMILTON LLP
2112 Pennsylvania Avenue
Washington, DC 20037
Telephone: (202) 974-1680

BRIAN KLEIN (SBN 258486)
bklein@waymakerlaw.com
ASHLEY MARTABANO (SBN 236357)
amartabano@waymakerlaw.com
WAYMAKER LLP
515 S. Flower Street, Suite 3500
Los Angeles, CA 90071
Telephone: (424) 652-7814

*Attorneys for Defendants Payward, Inc.
and Payward Ventures, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PAYWARD, INC.; PAYWARD VENTURES,
INC.,

Defendants.

Case No. 3:23-cv-06003-WHO

Judge: Hon. William H. Orrick
Hearing Date: June 12, 2024
Time: 2:00 p.m.

**DECLARATION OF MATTHEW C.
SOLOMON IN SUPPORT OF
DEFENDANTS' REPLY
MEMORANDUM OF LAW**

1 I, Matthew C. Solomon, declare:

2 1. I am an attorney admitted to practice before this Court *pro hac vice*. I am a partner
3 with the law firm Cleary Gottlieb Steen & Hamilton LLP, counsel for Defendants Payward, Inc.
4 and Payward Ventures, Inc. (together, “Kraken”) in this matter. I submitted a declaration in
5 support of Kraken’s Motion to Dismiss (ECF No. 26). Kraken requested that the Court take
6 judicial notice of the two exhibits to my prior declaration, and additional documents (ECF No. 27).
7 The judicial notice request included the internet link or docket information for those additional
8 documents. I submit this Reply Declaration in order to attach copies of those additional
9 documents. The exhibits to this Reply Declaration are PDF copies of the documents reflected in
10 the internet links and docket cites that were previously included in Kraken’s judicial notice request.
11 I declare that the following is true to the best of my knowledge, information, and belief, and that if
12 called upon to testify, I could and would testify to the following.

13 2. Attached here as **Exhibit C** is a true and correct copy of the Complaint filed in *SEC*
14 *v. Coinbase, Inc.*, No. 1:23-cv-04738 (KPF) (S.D.N.Y.), ECF No. 1.

15 3. Attached here as **Exhibit D** is a true and correct copy of the Complaint filed in *SEC*
16 *v. Binance*, No. 1:23-cv-01599 (ABJ) (D.D.C.), ECF No. 1.

17 4. Attached here as **Exhibit E** is a true and correct copy of the Complaint filed in
18 *CFTC v. Zhao*, No. 1:23-cv-01887 (N.D. Ill.), ECF No. 1.

19 5. Attached here as **Exhibit F** is a true and correct copy of the Ripple Defendants’
20 Statement of Undisputed Material Facts in *SEC v. Ripple*, 20-CV-10832 (AT) (SN) (S.D.N.Y.),
21 ECF No. 826.

22 6. Attached here as **Exhibit G** is a true and correct copy of the Congressional hearing
23 transcript titled *The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset*
24 *Markets: Joint Hearing Before the H. Comm. on Fin. Servs. and the H. Comm. on Agric.*, 118th
25 Cong. (May 10, 2023). This transcript is publicly available at <http://tinyurl.com/4xmupbxr>.

26 7. Attached here as **Exhibit H** is a true and correct copy of the Congressional hearing
27 transcript titled *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail*
28

1 *Investors Collide, Part III, Hearing Before the H. Comm. on Fin. Servs.*, 117th Cong. (May 6,
2 2021). This transcript is publicly available at <http://tinyurl.com/3u2cynya>.

3 8. Attached here as **Exhibit I** is a true and correct copy of the Congressional hearing
4 transcript titled *The Future of Digital Asset Regulation, Hearing Before the H. Comm. on Agric.*,
5 117th Cong. (June 23, 2022). This transcript is publicly available at <http://tinyurl.com/5a9dvba3>.

6 9. Attached here as **Exhibit J** is a true and correct copy of the Lummis-Gillibrand
7 Responsible Financial Innovation Act, S. 2281, 118th Cong. (2023). This bill is publicly available
8 at <https://tinyurl.com/3yx8f5hm>.

9 10. Attached here as **Exhibit K** is a true and correct copy of the Financial Innovation
10 and Technology for the 21st Century Act, H.R. 4763, 118th Cong. (2023). This bill is publicly
11 available at <https://tinyurl.com/yc38dmjn>.

12 11. Attached here as **Exhibit L** is a true and correct copy of the Clarity for Payment
13 Stablecoins Act of 2023, H.R. 4766, 118th Cong. (2023). This bill is publicly available at
14 <https://tinyurl.com/yc2nmpsx>.

15 12. Attached here as **Exhibit M** is a true and correct copy of the Digital Commodity
16 Exchange Act of 2022, H.R. 7614, 117th Cong. (2022). This bill is publicly available at
17 <https://tinyurl.com/45cnjwyd>.

18 13. Attached here as **Exhibit N** is a true and correct copy of the Digital Commodities
19 Consumer Protection Act of 2022, S. 4760, 117th Cong. (2022). This bill is publicly available at
20 <https://tinyurl.com/bdd7r5p3>.

21 14. Attached here as **Exhibit O** is a true and correct copy of the Token Taxonomy Act
22 of 2021, H.R. 1628, 117th Cong. (2021). This bill is publicly available at
23 <https://tinyurl.com/bezac866>.

24 15. Attached here as **Exhibit P** is a true and correct copy of the Eliminate Barriers to
25 Innovation Act of 2021, H.R. 1602, 117th Cong. (2021). This bill is publicly available at
26 <https://tinyurl.com/2mx3mt8m>.

1 16. Attached here as **Exhibit Q** is a true and correct copy of the Crypto-Currency Act of
2 2020, H.R. 6154, 116th Cong. (2020). This bill is publicly available at
3 <https://tinyurl.com/589kheax>.

4 17. Attached here as **Exhibit R** is a true and correct copy of the U.S. Virtual Currency
5 Market and Regulatory Competitiveness Act of 2019, H.R. 923, 116th Cong. (2019). This bill is
6 publicly available at <https://tinyurl.com/3hscvaj2>.

7 18. Attached here as **Exhibit S** is a true and correct copy of the December 15, 2023
8 letter from U.S. Securities and Exchange Commission (“SEC”) Secretary Vanessa Countryman to
9 Paul Grewal, Chief Legal Officer of Coinbase Global, Inc. This letter is publicly available at
10 <http://tinyurl.com/354jahee>.

11 19. Attached here as **Exhibit T** is a true and correct copy of the SEC’s Fiscal Year 2023
12 Congressional Budget Justification Annual Performance Plan, dated March 24, 2022, which is
13 publicly available at <http://tinyurl.com/46huja49>.

14 20. Attached here as **Exhibit U** is a true and correct copy of the SEC’s Mission
15 statement. This statement is publicly available at <http://tinyurl.com/ycxm3p4m>.

16 21. Attached here as **Exhibit V** is a true and correct copy of the SEC’s Order Granting
17 Accelerated Approval of Proposed Rule Changes to List and Trade Bitcoin-Based Commodity-
18 Based Trust Shares and Trust Units, Release No. 34-99306. This Order was issued on January 10,
19 2024 and is publicly available at <http://tinyurl.com/2p98h2kc>.

20 22. Attached here as **Exhibit W** is a true and correct copy of the SEC’s Notice of
21 Effectiveness. This notice is publicly available at <https://tinyurl.com/bde7p3wk>.

22 23. Attached here as **Exhibit X** is a true and correct copy of SEC Commissioner Hester
23 M. Peirce’s January 20, 2023 speech titled *Outdated: Remarks Before the Digital Assets at Duke*
24 *Conference*. This speech is publicly available at <https://tinyurl.com/47cypbvt>.

25 24. Attached here as **Exhibit Y** is a true and correct copy of former SEC Division of
26 Corporation Finance Director William Hinman’s June 14, 2018 speech titled *Digital Asset*
27 *Transactions: When Howey Met Gary (Plastic)*. This speech is publicly available at
28 <https://tinyurl.com/9k6hbh3m>.

25. Attached here as **Exhibit Z** is a true and correct copy of the White House Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets. This Fact Sheet was published on September 16, 2022 and is publicly available at <http://tinyurl.com/46hcbtcm>.

26. Attached here as **Exhibit AA** is a true and correct copy of Commodity Futures Trading Commission's Release Number 8838-23 titled *CFTC Approves Two Proposals and a DCO Application*. This release is publicly available at <http://tinyurl.com/5262yud3>.

27. Attached here as **Exhibit BB** is a true and correct copy of the Bitcoin page of Kraken's website, publicly available at <http://tinyurl.com/359jk835>.

28. Attached here as **Exhibit CC** is a true and correct copy of the Ethereum page of Kraken's website, publicly available at <http://tinyurl.com/2c6477sz>.

29. Attached here as **Exhibit DD** is a true and correct copy of the January 16, 2014 Vice article *What Satoshi Said: Understanding Bitcoin Through the Lens of Its Enigmatic Creator*, written by Alec Liu. This article is publicly available at <http://tinyurl.com/46kffsbw>.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9th day of May, 2024 in Washington, D.C.

/s/ Matthew C. Solomon

Matthew C. Solomon